

1 DAVID I. DALBY (SBN: 114850)
2 CASEY A. HATTON (SBN: 246081)
3 HINSHAW & CULBERTSON LLP
4 One California Street, 18th Floor
5 San Francisco, CA 94111
6 Telephone: 415-362-6000
7 Facsimile: 415-834-9070
8 ddalby@hinshawlaw.com

9 Attorneys for Defendants
10 USA Cycling, Inc. and Linda Buffetti

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CORNEALIUS LOPES,

15 Plaintiff,

16 vs.

17 FREEMONT FREEWHEELER, ET AL,

18 Defendants.

) Case No.: C 07-6213 PJH
)
) NOTICE OF DEFENDANTS USA
) CYCLING, INC. AND LINDA BUFFETTI'S
) MOTION TO DISMISS PURSUANT TO
) FRCP 12(b)(5)(6)
) Date: June 25, 2008
) Time: 9:00 a.m.
) Courtroom: 3
) Hon. Phyllis J. Hamilton
)
) Complaint Filed: November 2, 2007

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE THAT on June 25, 2008 at 9:00 a.m. before Judge Phyllis J.
23 Hamilton, located at Courtroom 3, 17th floor, 450 Golden Gate Avenue, San Francisco,
24 California 94102, or as soon thereafter as the matter may be heard, defendants USA CYCLING,
25 INC. and LINDA BUFFETTI will move to dismiss this action against them on the following
26 grounds:
27
28

1 1. USA Cycling, Inc. moves to dismiss this action pursuant to Federal Rule of Civil
2 Procedure, Rules 4(h) and 12(b)(5) as it has never been properly served with a summons and the
3 complaint.

4 2. USA Cycling, Inc. also moves to dismiss the action against it under Federal Rule
5 of Civil Procedure, Rule 12(b)(6) because the only count alleged against USA Cycling is barred
6 by the statute of limitations and it fails to state a claim upon which relief may be granted.

7 3. Defendant Linda Buffetti moves this court to dismiss this action under Federal
8 Rule of Civil Procedure, Rule 12(b)(6) because the complaint is barred by the statute of
9 limitation and fails to state a claim upon which relief may be granted.

10 This motion is based on this Notice of Motion, the Memorandum of Points of Authorities
11 accompanying this motion, the pleadings in this action, the Request for Judicial Notice of
12 plaintiff's prior criminal prosecution (Alameda Superior Court, Case No. 209109-1), plaintiff's
13 prior suit against Joseph Dale Warren, et al. (Federal District Court, Northern District of
14 California, Case No. C-06-03705 CRB), the Declaration of Linda Buffetti and such other and
15 further evidence as may be produced at the time of the hearing.

16
17 DATED: May 12, 2008

HINSHAW & CULBERTSON LLP

18
19 By: 

20 DAVID I. DALBY

Attorneys for Defendants

USA Cycling, Inc. and Linda Buffetti

PROOF OF SERVICE

[I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within actions; my business address is One California Street, 18th Floor, San Francisco, CA 94111.

On May 12, 2008, I served the document(s) entitled:
Notice of Defendants USA Cycling, Inc. and Linda Buffetti's Motion to Dismiss Pursuant to FRCP 12(b)(5)(6); Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss Complaint; Request for Judicial Notice in Support of Motion to Dismiss; Declaration of Linda Buffetti in Support of Motion to Dismiss; [Proposed] Order

on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated below:

SEE ATTACHED SERVICE/MAILING LIST

☒ **(BY MAIL):** I deposited such envelope in the mail at San Francisco, California. The envelope was mailed with postage fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.


☐ **(BY FACSIMILE TRANSMISSION):** I caused a true copy thereof from sending facsimile machine telephone number 415-834-9070 to be sent via facsimile to the above listed names and facsimile numbers and received confirmed transmission reports indicating that this document was successfully transmitted to the parties named above.

☐ **(VIA OVERNIGHT MAIL):** I deposit such envelope to be placed for collection and handling via UPS following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for UPS. On the same day that material is placed for collection, it is picked by UPS at San Francisco, California.

☐ **(BY HAND DELIVERY):** I delivered by hand each sealed envelope to the addressee(s) mentioned in the attached service/mailing list.

☒ **(BY ELECTRONIC TRANSFER:)** I caused such document(s) to be electronically served to the parties on the Service List maintained on Pacer's Website for this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on May 12, 2008, at San Francisco, California.



Grace Stuart

SERVICE/MAILING LIST

Lopes v. Freemont Freewheeler, et al.,
USDC Northern District, Case No. C 07-6213 PJH

Plaintiff in Pro Per:

Cornelius Lopes
6251 Quartz Place
Newark, CA 94560

Mark P. Meuser
P.O. Box 5412
Walnut Creek, CA 94596
T: (415) 577-2850
F: (925) 262-2318
email: mpm@markmeuser.com
Attorney for Defendant Larry Nolan

Gary M. Lepper
Furah Faruqui
Law Offices of Gary M. Lepper
1600 S. Main Street, Suite 305
Walnut Creek, CA 94596
Attorneys for Defendants:
Joseph Dale Wren, Newark Police Department
and Jim Davis